



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North  
701 Northwest 1<sup>st</sup> Court · 8<sup>th</sup> Floor · Miami, Florida 33136  
Phone: (305) 579-2594 · Facsimile: (305) 579-0273  
Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

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### MEMORANDUM

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**TO:** Ana DaSilva, Selection Committee Coordinator  
Strategic Procurement Department

Sade Chaney, Research Manager  
Office of the Commission Auditor

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2023-01, Voting Conflict of Interest § 2-11.1(v); County Resolution  
R-449-14, Appearances of Impropriety

**DATE:** January 4, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding the following proposed transaction.

Facts:

We have reviewed your memorandum dated December 23, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for MIA NTD Baggage Handling System Modification to the Inline Check Baggage Inspection System – Project No. E22-MDAD-03. The memorandum was prepared in connection with Resolution Number R-449-14, directing the Office of the Commission Auditor (“OCA”) to conduct background checks on members serving on Evaluation/Selection Committees.

The memorandum noted that one member, one alternate member, and one technical advisor of the Selection Committee made disclosures on their Neutrality Affidavits/Disclosure Forms that merited submission to the COE for an opinion. The memorandum noted that:

- A. Richard Cabrera, Miami-Dade Aviation Department, disclosed business relationships on his Neutrality Affidavit with Ross & Baruzzini, Inc. and Burns & McDonnell Engineering Company Inc., including work/assignments for MDAD projects. Each firm is identified as a respondent to this solicitation.

We conferred with Mr. Cabrera. He is a Construction Manager 3 for the Miami-Dade County Aviation Department (“MDAD”). Mr. Cabrera stated that he has not worked for either Ross & Baruzzini, Inc. (“R&B Inc.”) or Burns & McDonnell Engineering Company, Inc. (“B&MEC”). Rather, Mr. Cabrera clarified that when he listed “business relationships” with those companies on his Neutrality Affidavit, he referred to interactions with them in the past pursuant to his official County duties. Specifically, Mr. Cabrera stated that both R&B Inc. and B&MEC worked as County consultants in the past and that he interacted with them in his official capacity pursuant to their County work. Mr. Cabrera stated that he does not have any personal financial interests in either R&B Inc. or B&MEC, nor does he do any personal business with either company. Mr. Cabrera further stated that he does not have any personal, close social, or other relationship with any current employee of R&B Inc. or B&MEC. Finally, Mr. Cabrera stated that, regardless of his past professional interactions with both companies, he can be fair and impartial when evaluating the respondents to this solicitation.

- B. Manuel Freire (Alternate), Miami-Dade Aviation Department, disclosed business relationships on his Neutrality Affidavit with Ross & Baruzzini, Inc., Burns & McDonnell Engineering Company Inc, EXP US Services, Inc., Gurri Matute PA, Louis J. Aguirre & Associates PA, DDA Engineers PA, Gartek Engineering Corporation, and JSM & Associates LLC, through various contracts. Each firm is identified as a respondent to this solicitation.

We conferred with Mr. Freire. He is a Construction Manager 3 for MDAD. Mr. Freire stated that he has not worked for R&B Inc., B&MEC, EXP US Services, Inc. (“EXP”), Gurri Matute PA (“GMPA”), Louis J. Aguirre & Associates PA (“LA&A”), DDA Engineers PA (“DDA”), Gartek Engineering Corporation (“Gartek”), or JSM & Associates LLC (“JSM”). Rather, Mr. Freire clarified that when he listed “business relationships” with those companies, he referred to interactions he had with them in the past, or that he currently has with them, pursuant to his official capacity as a County consultant or a County employee. Specifically, Mr. Freire stated that he has worked for the County for eight (8) years, and that prior to that he worked as a County consultant for seven (7) years, meaning he worked for a third-party company that contracted with the County to provide contract workers to perform tasks like those he currently performs. Mr. Freire stated that, regarding R&B Inc., it provided electrical engineering services on some projects that he worked on in the past as a County consultant and a County employee. Regarding B&MEC, Mr. Freire stated that it was the architect of record on the last major County project he worked on. Regarding GMPA, LA&A, DDA, and JSM, Mr. Freire stated that all four were subcontractors to B&MEC under the same County project that he worked with B&MEC, and that they provided architectural, electrical engineering, structural engineering, and mechanical services respectively. Regarding EXP, Mr. Freire stated that it is providing architectural services on one of the projects that he currently manages – the North Terminal Optimization Project. Regarding Gartek, Mr. Freire stated that it provided mechanical engineers for various County projects that he worked on both as a County consultant and a County employee.

Regarding all eight above-discussed companies, Mr. Freire stated that he has only interacted with them in his official capacity pursuant to their work for the County. Mr. Freire stated that he does not have any personal financial interest in any of the seven companies, nor does he do any personal business with any of them. Mr. Freire further stated that he does not have any personal, close social, or other relationship with any current employee of any of the eight above-discussed

companies. Finally, Mr. Freire stated that, regardless of his past professional interactions with the seven above-discussed companies, he can be fair and impartial when evaluating the respondents to this solicitation.

- C. Summer Johnson (Technical Advisor), Miami-Dade Aviation Department, disclosed business relationships on her Neutrality Affidavit with Burns & McDonnell Engineering Company Inc., BNP Associates Inc., and JSM & Associates LLC, including work/assignments for previous projects. Each firm is identified as a respondent to this solicitation.

We conferred with Ms. Johnson. She is an Airport Facilities Superintendent for MDAD. Ms. Johnson stated that she has not worked for B&MEC, BNP Associates Inc. (“BNP”), or JSM. Rather, Ms. Johnson clarified that when she listed “business relationships” with those companies, she referred to interactions she had with them in the past pursuant to her official capacity as a County employee. Regarding B&MEC and BNP, Ms. Johnson stated that they both worked as consultants on a County project for MDAD to which she was also assigned to work in her capacity as a County employee, and that she only interacted with them as part of her County duties. Regarding JSM, Ms. Johnson stated that they have worked as consultants on multiple County projects for MDAD to which she was also assigned to work in her capacity as a County employee, and that she interacted with JSM as part of her County duties. Regarding all three companies, Ms. Johnson stated that she does not have any personal, close social, or other relationship with any current employee of any of the three companies. Finally, Ms. Johnson stated that, regardless of her past professional interactions with each of the three companies and/or their respective representatives, she believes that she can be fair and impartial when providing technical advice to the Selection Committee pursuant to this solicitation.

#### Discussion:

The COE conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards. The COE also considers whether the circumstances presented create an appearance of impropriety and makes recommendations based on Resolution No. R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Specifically, Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel:

shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stock holder, bondholder, debtor or creditor.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the COE also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed selection committee. *See* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b). “In all procurement matters, appearances of integrity and fairness are paramount, [as there is a] ‘need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence . . . [which] may require a higher standard of ethics . . . .’” INQ 17-131 (quoting INQ 14-242).

However, absent some other factor, the mere fact that a Selection Committee member has interactions with a respondent in connection with the member’s County duties would not create an appearance of impropriety that could affect the public trust in the integrity of the procurement process. *See* INQ 22-147; INQ 20-136; INQ 18-230. In fact, it may be valuable to have an individual on the Selection Committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County. *See* INQ 22-147; INQ 18-230; INQ 18-21.

A. Mr. Cabrera’s Appointment to the Selection Committee.

In this case, it does not appear that Mr. Cabrera has a voting conflict of interest under Section 2.11-1(v) of the County Ethics Code because he will not be directly affected by the vote, nor does he have any of the enumerated relationships with any entity affected by the vote. *See* INQ 18-21.

Furthermore, as discussed above, due to the sensitivity of the procurement process, the COE also opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b). Here, Mr. Cabrera’s professional interactions with R&B Inc. and B&MEC as part of his County duties would not give rise to an appearance of impropriety; rather, his personal familiarity with their work may be valuable to the Selection Committee. *See* INQ 22-147; INQ 18-230; INQ 18-21.

Accordingly, there does not appear to be any voting conflict or appearance of impropriety that would in any way detract from Mr. Cabrera’s ability to conduct a fair and objective evaluation of this solicitation.

B. Mr. Freire’s Appointment to the Selection Committee as an Alternate.

In this case, it does not appear that Mr. Freire, if called upon to serve on the Selection Committee in his capacity as an Alternate, will have a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because he will not be directly affected by the vote, nor does he have any of the enumerated relationships with any entity affected by the vote. *See* INQ 18-21.

Furthermore, as discussed above, due to the sensitivity of the procurement process, the COE also opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b). Here, Mr. Freire’s past professional interactions with R&B Inc., B&MEC, GMPA, LA&A, DDA, JSM, and Gartek, as part of his County duties

would not give rise to an appearance of impropriety; rather, his personal familiarity with their work may be valuable to the Selection Committee. *See* INQ 22-147; INQ 18-230; INQ 18-21.

However, regarding Mr. Freire's interactions with EXP concerning a project that he is currently managing, Mr. Freire is reminded that the Selection Committee for which he will serve as an alternate voting member operates under the County's Cone of Silence, codified in Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by County Commissioners, County staff, Selection Committee Members, and prospective contractors, as well as lobbyists and consultants, regarding any procurement matter during the time that the Cone of Silence is in effect. **Thus, Mr. Freire is prohibited from communicating about this solicitation/project with any of the respondents to this solicitation/project, including EXP, who he currently interacts with and supervises as part of his County duties.** *See* INQ 22-147.

Accordingly, there does not appear to be any voting conflict or appearance of impropriety that would in any way detract from Mr. Freire's ability to conduct a fair and objective evaluation of this solicitation, but he is reminded of the restrictions imposed by the Cone of Silence, pursuant to Section 2.11-1(t) of the County Ethics Code.

C. Ms. Johnson's Appointment to the Selection Committee as a Technical Advisor.

In this case, it does not appear that Ms. Johnson has a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because, as a Technical Advisor to the Selection Committee, she will not have a vote. It is nevertheless worth noting that, even if Ms. Johnson were a voting member of the selection committee, she will not be directly affected by the vote, and she does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 22-100; INQ 20-84; INQ 20-79.

Furthermore, as discussed above, due to the sensitivity of the procurement process, the COE also opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b). Here, Ms. Johnson's professional interactions with B&MEC, BNP, and JSM, as part of her County duties would not give rise to an appearance of impropriety; rather, her personal familiarity with their work may be valuable to the Selection Committee. *See* INQ 22-147; INQ 18-230; INQ 18-21.

Opinion:

Accordingly, consistent with our holdings in prior ethics opinions, **Mr. Cabrera, Mr. Freire, and Ms. Johnson do not have a conflict of interest under the County Ethics Code** that would prevent them from serving on this Selection Committee because they will not be directly affected by the vote, they do not have any enumerated relationship with an entity affected by the vote, and their service on the Selection Committee would not otherwise give rise to an appearance of impropriety. *See* INQ 22-147; INQ 18-230; INQ 18-21.

However, Mr. Freire, as well as Mr. Cabrera and Ms. Johnson, are reminded that the Selection Committee on which they will serve operates under the County's Cone of Silence, codified in

Section 2-11.1(t) of the County Ethics Code, and thus they are prohibited from communicating about this solicitation/project with any of the respondents to this solicitation/project, including those who they are currently interacting with and/or supervising as part of their County duties.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.